

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JOSEPH JEROME WILBUR, *et al.*,

9 Plaintiffs,

10 v.

11 CITY OF MOUNT VERNON, *et al.*,

12 Defendants.

No. C11-1100RSL

ORDER DENYING MOTION FOR
SANCTIONS

13 This matter comes before the Court on “Defendant[’]s Motion for Sanctions for
14 Wilbur’s Refusal to Appear at Properly Noted Deposition.” Dkt. # 78. On November 8, 2011,
15 plaintiff Joseph Jerome Wilbur failed to appear for deposition. Although plaintiffs’ counsel had
16 provided defendants with prior notice of the cancellation, they were not in contact with their
17 client and therefore had no explanation for his absence.¹ Attempts to discuss alternative dates
18 for the deposition were rebuffed by defendants, who instead chose to file this motion for
19 sanctions later that same day. Defendants argue that the deposition testimony of plaintiff Wilbur
20 is crucial to their ability to respond to plaintiffs’ motion for preliminary injunction and that the
21 appropriate sanction for his failure to appear is to strike his declaration and “the opinion of every
22 expert who relied upon the declaration.” Dkt. # 78 at 3.
23

24
25 ¹ Counsel’s factual representation that his client was unable to attend the deposition “due to
26 issues he is having with his family and the acute stress caused by these issues” is hearsay and has not
been considered in the context of this motion. Decl. of Toby J. Marshall (Dkt. # 94) at ¶ 9.

ORDER DENYING MOTION FOR
SANCTIONS

1 Having reviewed the memoranda, declarations, and exhibits submitted by the
2 parties, the Court finds as follows:

3
4 Plaintiff Wilbur's failure to appear for a properly-noted deposition is troubling.
5 Litigants in federal court have certain obligations, and it appears that plaintiff Wilbur is either
6 unaware of his obligations or is not able to fulfill them. The Court is ready and willing to use its
7 equitable powers to remedy any unfairness that may have arisen in this case.

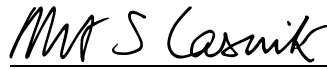
8 Defendants, however, identify no harm that would justify the relief requested.
9 Defendants were notified of plaintiff Wilbur's unavailability in time to avoid a wasted trip, and
10 plaintiffs have paid the cancellation fee for the court reporter. Defendants have not sought an
11 order to compel the deposition (the obvious remedy for a witness's failure to appear) and have
12 rejected plaintiffs' attempts to reschedule. Instead, defendants seek the comparatively harsh
13 sanction of an evidentiary exclusion, apparently on the ground that the deposition could not be
14 rescheduled before defendants' opposition to plaintiffs' motion for preliminary injunction was
15 due. Defendants did not, however, inquire regarding plaintiffs' willingness to continue the note
16 date on the motion for preliminary injunction or request an extension of time from the Court.

17 Nor have defendants shown that plaintiff Wilbur's deposition is crucial (or even
18 particularly relevant) to their ability to oppose plaintiffs' preliminary injunction motion.
19 Defendants' motion for summary judgment was based on virtually the same facts and
20 circumstances as plaintiffs' motion for preliminary injunction. Plaintiff Wilbur's declaration and
21 the expert opinions defendants seek to strike were offered in opposition to the summary
22 judgment motion and in support of the preliminary injunction motion. Defendants controlled the
23 timing of their dispositive motion and chose to file it before taking plaintiff Wilbur's deposition.
24 In fact, briefing was complete and the motion for summary judgment was noted for
25 consideration weeks before November 8th. It is simply not logical to assume that this single
26

1 deposition is the key to defendants' ability to defend against plaintiffs' request for a preliminary
2 injunction.

3
4 For all of the foregoing reasons, defendants' motion to strike (a) the declaration of
5 plaintiff Wilbur and (b) the opinions of all experts who reviewed the declaration is DENIED.

6
7
8 Dated this 24th day of January, 2012.

9 
10 Robert S. Lasnik
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26